No. 14,585

IN THE

United States Court of Appeals

For the Ninth Circuit

FINTON J. PHELAN, JR., and E. R. CRAIN, *Appellants,* vs. RICHARD TAITANO, and HARRY L. MANGERICH, *Appellees.*	

On Appeal from the District Court of Guam for the Unincorporated Territory of Guam.

APPELLANTS' OPENING BRIEF.

FINTON J. PHELAN, JR.,
Suite 201-203, Mesa Building,
First Street West, Agana, Guam,
E. R. CRAIN,
Suite 101, Aflague Building,
Agana, Guam,
Pro se.

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On Appeal from the District Court of Guam for the Unincorporated Territory of Guam.

APPELLANTS' OPENING BRIEF.

JURISDICTION.

Two appeals in the same cause are herein combined, both being taken from the District Court of Guam; the first appeal having been noticed on the 12th day of November, 1954, from the order of the District Court of Guam denying appellants' motion for a preliminary and temporary injunction entered on the 12th day of November, 1954; the second appeal was noticed on the 6th day of December, 1954, from the order of the District Court of Guam entered on the 30th day of November, 1954, dismissing the complaint for want of jurisdiction over the subject matter.

This Court has jurisdiction of this appeal by virtue of the provisions of Title 28 U.S.C.A. Section 41; 1291; 1292; 1340.

ISSUES PRESENTED HEREIN.

1. Did the Court have jurisdiction of the subject matter of this cause?

2. Did the Court abuse its discretion by refusing to grant the temporary restraining order and injunction; by holding itself to be without jurisdiction to restrain the acts of the defendants; and by holding that plaintiffs must submit to defendants' demands as a condition precedent to seeking relief?

3. Was the Court biased in ignoring the Constitutional questions before it in this cause?

4. Was the Court in error in relying upon alleged facts not properly before it; in accepting defendants' affidavits as proof of statements therein contained; and ruling upon such facts that defendants are proper officers to collect a territorial income tax thereby denying to plaintiffs the opportunity to show otherwise?

5. Was the Court in error in holding that there did exist adequate administrative procedures, remedies and safeguards for the protection of plaintiffs' rights?

6. Did the Court err in failing to take judicial notice of the laws of the United States and of Guam and assuming that the existence of the alleged territorial income tax is a fact established beyond the need of proof?

7. Can public officials shield acts in excess of statutory authority behind the cloak of their office?

8. Was the Court in error in not excluding an affidavit served upon plaintiffs in violation of rule 56?

9. Did the Court err in failing to take judicial notice of the provisions of Title 38 U. S. C. A. and of Section 690 (13) of the Code of Civil Procedure of Guam?

10. Can the Court assume jurisdiction of a cause already on appeal?

11. Did the Court err in permitting laymen not admitted to practice before it to represent the defendants?

12. It is the further contention of Appellants that they were erroneously precluded by Court from demonstrating to the Court and for the record the following points supporting the allegations contained in the complaint:

(a) An assumed delegation of the legislative powers of the Congress contrary to the Constitution and laws of the United States.

(b) The usurpation of the powers reserved to the Congress to levy and collect taxes.

(c) Defendants' violations of the provisions of the fourth and fifth amendments to the Constitution of the United States.

(d) Denial of the equal protection of the laws and due process of law both to the plaintiffs and their clients and the irreparable harm to plaintiffs and others.

(e) That Chapter 8A, Title 48 U. S. C. A., as interpreted by defendants:

1. Is repugnant to the Constitution and laws of the United States.

2. Contains no standards.

3. Is indefinite and uncertain.

4. Is vague and ambiguous.

5. Contains no grant of authority or power.

6. Violates the precepts of statutory construction established by the Supreme Court of the United States.

(f) Violations of the Bill of Rights of Guam.

STATEMENT OF THE CASE.

Appellants are citizens of the United States, permanently residing within the unincorporated territory of Guam, members of the Bar and engaged in the private practice of the Law. Since January first, 1953, appellants have maintained separate offices and prior to that, for a period of two years, they practiced as partners.

In 1950, the United States Congress enacted a Statute commonly known as the Organic Act of Guam. This act erected the present civil government for this possession, replacing the previous Naval Government existing by virtue of a Presidential Executive Order.

The Organic Act of Guam unfortunately contained, as enacted, many ambiguities both patent and latent, the resolution of which undoubtedly will, as it has already, entail much litigation over the constructions of this Act. The present action is one such case, involving not only the construction of a major portion of that Act but collaterally many points of far reaching importance within the unincorporated territory of Guam affecting not only its citizens

but also its business community. This action is not a tax case, but is essentially one of Statutory construction and Constitutional law and principles.

Officials of the Government of Guam, as well as officers of the Department of the Interior, have interpreted administratively the provisions of the Organic Act of Guam with respect to income taxes and have sought to implement their interpretation by executive action rather than by the action of the legislative branch of either the United States or of Guam.

They have construed to exist a statute patterned after Title 26 U.S.C.A., though indefinite as to whether a statute of the United States or of Guam; to create a semblance of the Bureau of Internal Revenue, assuming the powers, authorities, and duties of the various officers of the Federal Bureau under the claimed authority of the Governor of Guam to erect such; claimed the right and power to construe, alter, change and amend the text by administrative action, and have never published the text of the law as changed and altered or published the claimed changes.

It has been impossible to find, anywhere, the changes, additions, substitutions or deletions in the text of Title 26 U.S.C.A. claimed by these officials to have been made resulting in a tax statute, if such it be, of such flexibility, vagueness and indefiniteness that its limits cannot be determined or described.

It is in the light of such circumstances that the present action arose. Appellants after the passage of the Organic Act of Guam devoted considerable study to the problem herein of concern and endeavored to find the correct con-

struction and solution of the problem and the numerous other grave problems which of necessity are closely related thereto.

Officials of the Government of Guam claiming, though without any local statute authorizing or empowering them to so act, these powers and authorities constituted themselves as a local Bureau of Internal Revenue and have, without any attempt to legitimize their position, proceeded to enforce, administer and collect, taxes, including the imposition of penalties and the exercise of various summary procedures.

The position of appellants being that if the Statute is Title 26 U.S.C.A., only the Commissioner of Internal Revenue and his authorized delegates possess such powers and all others are interlopers; if it is a local Statute, no such officers exist within the Government of Guam and these defendants are acting without any color of Law and in want of any authority. That in any event as construed by appellants and their masters the Organic Act of Guam is vague, uncertain, ambiguous, and lacking either standards or certainty. That therefore many Constitutional vices at once rise following the attempted construction of the Organic Act as claimed by appellants.

Seeking to determine definitely the existence or non-existence of a territorial tax as claimed, its exact text if any, the officers who are charged with the responsibility to administer such law and the extent of and limits of the authority of local officers, appellants, who report monthly their entire gross income to the Government of Guam, have contested the right of these individuals to enforce the Income Tax Laws of the United States and have attempted to secure a

determination of the respective rights of all parties. Rather than make available to anyone the text of the Statute being enforced and using such portions of the Business Privilege Tax Law of Guam as may be convenient in connection with portions of Title 26 U.S.C.A., these officials have proceeded to seize funds deposited in the bank by appellants, file purported liens, and otherwise attempt to coerce appellants to submit to their illegal and unauthorized demands.

Appellants accordingly, to protect their rights and to protect the rights of their numerous and various clients, filed this action questioning the authority of these appellees, seeking the vindication of their constitutional rights, the recovery of their property confiscated illegally, the preservation of their civil rights now being threatened, that appellees be restrained from their attempted illegal actions and that appellant Phelan recover the sums of money confiscated from him contrary to the Provisions of Section 454a of Title 38 U.S.C.A. and Section 690 (13) of the Code of Civil Procedure of Guam. Appellants brought this action in the District Court of Guam on the 8th day of November, 1954. A motion for a preliminary injunction was noticed by appellants and upon a hearing on the 12th day of November, 1954, said injunction was denied. Appellants thereupon noticed an appeal to this Court on the 12th day of November, 1954. Appellees filed their motion to dismiss, for summary judgment and to dismiss for lack of jurisdiction over the subject matter. No notice of motion was served upon appellants, though they were orally informed at the hearing of November 12th. A hearing was had upon appellee's motion on the 26th day of November, 1954, and, pursuant to the order of the court, an order of dismissal

was entered on the 30th day of November. Appellants noticed an appeal from this order on the 6th day of December, 1954. Pursuant to a motion for consolidation made by appellants, this court by order of 3 January, 1955, consolidated these appeals.

ISSUES PRESENTED HEREIN.

1. Was the Court in error:

   (a) In denying it had jurisdiction of the subject matter; thereafter assuming jurisdiction after an appeal was taken?

   (b) In holding that it could not issue an injunction or restraining order until plaintiffs had submitted to defendants' demands?

2. The Court erroneously relied upon alleged facts not before it; accepted an affidavit of defendants as proof of its contents; accepted said affidavit containing hearsay contrary to rule 56; and held without proof that defendants are the proper officers to collect income tax, thus holding by implication the existence of adequate procedures, remedies and safeguards.

3. Can public officials shield their acts in excess of statutory authority behind the cloak of their office?

4. The Court erred in interpreting statutes of the United States and assuming by implication that they had become statutes of Guam.

5. The Court erred in failing to take judicial notice of the provisions of Title 38, Section 454A, U. S. C. A. and of Section 690 (13) of the Code of Civil Procedure of Guam.

6. The Court was in error in permitting laymen not admitted to practice before it to represent the defendants.

It is the further contention of Appellants that they were erroneously deprived by the Court of their day in court and from demonstrating the following major points raised by the allegations contained in the complaint:

(a) The Court was biased in ignoring the Constitutional questions before it in this cause.

(b) An illegal assumption of the legislative powers of the Congress by defendants in violation of the Constitution of the United States and the usurpation of the powers reserved to the Congress to levy and collect taxes.

(c) Defendants' violations of the provisions of the fourth and fifth amendments to the Constitution of the United States.

(d) Denial of the equal protection of the laws and due process of law both to the plaintiffs and their clients and the irreparable harm to plaintiffs and others.

(e) That Chapter 8 A, Title 48, Section 1421i, U. S. C. A., as interpreted by defendants:

1. Is repugnant to the Constitution and laws of the United States.
2. Contains no standards.
3. Is indefinite and uncertain.
4. Is vague and ambiguous.
5. Contains no grant of authority or power.
6. Violates the precepts of statutory construction established by the Supreme Court of the United States.

(f) Violations of the Bill of Rights of Guam.

STATUTES AND RULES INVOLVED.

Constitution

Article I Section 1:

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Section 8:

"The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; . . ."

Article IV Section 3:

". . . The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Article VI:

". . . This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. . . ."

Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describ-

ing the place to be searched, and the persons or things to be seized."

Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Title 26 U.S.C.A.

Section 53:

"(b) To Whom return made. (1) Individuals. Returns (other than corporation returns) shall be made to the collector for the district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in the United States, then to the collector at Baltimore, Maryland.

"(2) Corporations. Returns of corporations shall be made to the collector of the district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in the United States, then to the collector at Baltimore, Maryland. 53 Stat. 28."

Section 62. Rules and Regulations:

"The Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this chapter. 53 Stat. 32."

Section 251. Income from sources within possessions of United States:

"(a) General rule. In the case of citizens of the United States or domestic corporations, satisfying the following conditions, gross income means only gross income from sources within the United States—

"(1) If 80 per centum or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section), for the three-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

"(2) If, in the case of such corporation, 50 per centum or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; or

"(3) If, in case of such citizen, 50 per centum or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States; either on his own account or as an employee or agent of another. . . ."

"(d) Definition. As used in this section the term 'possession' of the United States does not include the Virgin Islands of the United States and such term when used with respect to citizens of the United States does not include Puerto Rico. . . . (j) Employees of United States. For the purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States. As amended Nov. 8, 1945, 5:17 P.M., E.S.T., c. 453, Title I, § 102(b) (9),

59 Stat. 559; Aug. 1, 1947, c. 430, § 1, 61 Stat. 714; Sept. 23, 1950; 3:15 p.m., E.D.T., c. 994, Title II, §§ 220, 221 (a), 64 Stat. 944."

Section 272. Procedure in general:

((a) (1) Petition to the Tax Court of the United States.) "If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day) the taxpayer may file a petition with the Tax Court of the United States for a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety day period, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 3653(a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. . . ."

Section 272. Jeopardy assessments:

"(a) Authority for making. If the Commissioner believes that the assessment or collection of a deficiency will be jeopardized by delay, he shall immediately assess such deficiency (together with all interest, additional amounts, or additions to the tax provided for by law) and notice and demand shall be made by the collector for the payment thereof."

Section 291. Failure to file return:

"(a) In case of any failure to make and file return required by this chapter, within the time prescribed by

law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax: . . ."

Section 1101. Jurisdiction:

"The Tax Court and its divisions shall have such jurisdiction as is conferred on them by chapters 1, 2, 3, and 4 of this title, by Title II and Title III of the Revenue Act of 1926, 44 Stat. 9, or by laws enacted subsequent to February 26, 1926. 53 Stat. 158, amended Oct. 21, 1942, 4:30 p.m., E.W.T., c. 619, Title V, § 504 (a), 56 Stat. 957."

Section 1600. Rate of tax:

"Every employer (as defined in Section 1607 (a)) shall pay for the calendar year 1939 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3 per centum of the total wages (as defined in section 1607 (b)) paid by him during the calendar year with respect to employment (as defined in section 1607 (c)) after December 31, 1938. 53 Stat. 183, as amended Aug. 10, 1939, c. 666, Title VI, § 608, 53 Stat. 1387."

Section 1605. Payment of taxes:

"(a) Administration. The tax imposed by this subchapter shall be collected by the Bureau of Internal Revenue under the direction of the Secretary and shall be paid into the Treasury as internal-revenue collections."

Section 1621. Definitions:

". . . (a) Wages. The term 'wages' means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

". . . (8) (A) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States, if it is reasonable to believe that during the entire calendar year the employee will be a bona fide resident of a foreign country or countries, or . . .

"(8) (B) for services for an employer (other than the United States or any agency thereof) performed by a citizen of the United States within a possession of the United States (other than Puerto Rico), if it is reasonable to believe that at least 80 per centum of the remuneration to be paid to the employee by such employer during the calendar year will be for such services, or . . ."

Section 3612. Returns executed by Commissioner or Collector:

"(a) Authority of collector. If any person fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise;

"(b) Authority of Commissioner. In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise;

"(1) To make return. Make a return, or

"(2) To amend Collector's return. Amend any return made by a collector or deputy collector.

"(c) Legal status of returns. Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

"(d) Additions to tax

"(1) Failure to file return. In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: Provided, That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

"(2) Fraud. In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount. . . .

"(f) Determination and assessment. The Commissioner shall determine and assess all taxes, other than stamp taxes, as to which returns or lists are so made under the provisions of this section. 53 Stat. 437."

Section 3614. Examination of books and witnesses:

"(a) To determine liability of the taxpayer. The Commissioner for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the at-

tendance of the person rendering the return or of any officer having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons."

Section 3640. Assessment authority:

"The Commissioner is authorized and required to make the inquiries, determinations, and assessments of all taxes and penalties imposed by this title, or accruing under any former internal revenue law, where such taxes have not been duly paid by stamp at the time and in the manner provided by law. 53 Stat. 442."

Section 3650. Collection districts:

"(a) Establishment and alteration. For the purpose of assessing, levying, and collecting the taxes provided by the internal revenue laws, the President may establish convenient collection districts, and may from time to time alter said districts.

"(b) Number. The whole number of collection districts for the collection of internal revenue shall not exceed 65.

"(c) Boundaries

"(1) Hawaii. The Territory of Hawaii shall constitute a district for the collection of the internal revenue of the United States, with a collector, whose office shall be at Honolulu, and deputy collectors at such other places in the several islands as the Secretary shall direct.

"(2) Elsewhere. For the purpose mentioned in subsection (a), the President may subdivide any State, Territory, or the District of Columbia, or may unite two or more States or Territories into one district. 53 Stat. 445."

Section 3670. Property subject to lien:

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (in-

cluding any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. 53 Stat. 448."

Section 3671. Period of lien:

"Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. 53 Stat. 449.

Section 3740. Authorization to commence suit:

"No suit for the recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Commissioner authorizes or sanctions the proceedings and the Attorney General directs that the suit be commenced. 53 Stat. 460."

Section 3743. Regulations:

"It shall be the duty of the Commissioner, with the approval of the Secretary, to establish such regulations, not inconsistent with law, for the observance of revenue officers, respecting suits arising under the internal revenue laws in which the United States is a party, as may be deemed necessary for the just responsibility of those officers and the prompt collection of all revenues and debts due and accruing to the United States under such laws. 53 Stat. 460."

Section 3791. Rules and regulations:

"(a) Authorization

"(1) In general. Except as provided in section 1928 (a), Cotton Futures, section 2599, Marihuana, section 2559, Narcotics, section 3176, Liquor, and section 1805, Silver, the Commissioner, with the approval of the Secretary, shall prescribe and publish all need-

ful rules and regulations for the enforcement of this title.

"(2) In case of change in law. The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

"(b) Retroactivity of regulations or rulings. The Secretary or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect. 53 Stat. 467."

Section 3797. Definitions:

"(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof— . . ."

"(9) United States. The term 'United States' when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

"(10) State. The word 'State' shall be construed to include the territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

"(11) Secretary. The term 'Secretary' means the Secretary of the Treasury.

"(12) Commissioner. The term 'Commissioner' means the Commissioner of internal revenue.

"(13) Collector. The term 'collector' means collector of internal revenue.

"(14) Taxpayer. The term 'taxpayer' means any person subject to a tax imposed by this title."

Section 3900. Appointment and Salary:

"There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be

appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to basic compensation at the rate of $15,000 per annum. As amended Oct. 15, 1949, c. 695, § 5 (a), 63 Stat. 880."

Section 3901. Powers and Duties:

"(a) Assessment and collection. The Commissioner, under the direction of the Secretary—

"(1) General superintendence. Shall have general superintendence of the assessment and collection of all taxes imposed by any law providing internal revenue; and

"(2) Regulations, forms, stamps, and dies. Shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue; and shall provide hydrometers, and proper and sufficient adhesive stamps and stamps or dies for expressing and denoting the several stamp taxes, or, in the case of percentage taxes, the amount thereof; and alter and renew or replace such stamps from time to time, as occasion may require."

Section 3941. Appointment:

"(a) In general. The President, by and with the advice and consent of the Senate, shall appoint for each collection district a collector, who shall be a resident of the same.

"(b) Consolidation of collection districts. When two or more collection districts are united by the President, he may designate from among the existing officers of such districts one collector for the new district, or, at his discretion, he may make a new appointment of such officer for said district. . . ."

Section 3967. Prohibition upon discharge of another collector's duties:

"No collector shall be detailed or authorized to discharge any duty imposed by law upon any other collector. 53 Stat. 484."

Section 4040. Posts of duty of employees in field service or traveling:

"The Commissioner shall determine and designate the posts of duty of all employees of the internal revenue service engaged in field work or traveling on official business outside of the District of Columbia. 53 Stat. 495."

Section 4041. Issue of instructions, regulations and forms:

"(a) In general. The Secretary shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations, not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the internal revenue laws; and he shall give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law. . . ."

Section 4047. Penalties:

". . . (e) Other unlawful acts of revenue officers or agents. Every officer or agent appointed and acting under the authority of any revenue law of the United States—

"(1) Who is guilty of any extortion or willful oppression under color of law; or

"(2) Who knowingly demands other or greater sums than are authorized by law, or receives any fee, compensation, or reward, except as by law prescribed, for the performance of any duty; or

"(3) Willfully neglects to perform any of the duties enjoined on him by law; or

"(4) Who conspires or colludes with any other person to defraud the United States; or

"(5) Who makes opportunity for any person to defraud the United States; or

"(6) Who does or omits to do any act with intent to enable any other person to defraud the United States; or

"(7) Who negligently or designedly permits any violation of the law by any other person; or

"(8) Who makes or signs any false entry in any book, or makes or signs any false certificate or return, in any case where he is by law or regulation required to make any entry, certificate, or return; or

"(9) Who, having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against the United States under any revenue law, fails to report, in writing, such knowledge or information to his next superior officer and to the Commissioner; or

"(10) Who demands, or accepts, or attempts to collect, directly or indirectly, as payment or gift, or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or complaint for any violation or alleged violation of law, except as expressly authorized by law so to do—

"shall be dismissed from office, shall be fined not less than $1,000 nor more than $5,000, and be imprisoned not less than six months nor more than three years. The court shall also render judgment against the said officer or agent for the amount of damages sustained in favor of the party injured, to be collected by execution. One half of the fine so imposed shall be for the use of the United States, and the other half for the use of the informer, who shall be ascertained by the judgment of the court. The provisions of this subsection shall apply to internal revenue agents as fully as to internal revenue officers."

Section 4048. Extended application of penalties relating to internal revenue officers:

"All provisions of law imposing fines, penalties, or other punishment for offenses committed by an internal revenue officer or other officer of the Department of the Treasury, or under any bureau thereof, shall apply to all persons whomsoever, employed, appointed, or acting under the authority of any internal revenue law, or any revenue provision of any law of the United States, when such persons are designated or acting as officers or deputies, or persons having the custody or disposition of any public money. 53 Stat. 497."

Title 28 U.S.C.A.

Section 1331. Federal question; amount in controversy:

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

Section 1340. Internal revenue; customs duties:

"The district courts shall have original jurisdiction of any civil action arising under any Act of Congress providing for internal revenue, or revenue from imports or tonnage except matters within the jurisdiction of the Customs Court."

Section 1341. Taxes by States:

"The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

Section 1343. Civil Rights:

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

"(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privileges of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Title 8;

"(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 47 of Title 8 which he had knowledge were about to occur and power to prevent;

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

Section 1357. Injuries under Federal laws:

"The district courts shall have original jurisdiction of any civil action commenced by any person to recover damages for any injury to his person or property on account of any act done by him, under any Act of Congress, for the protection or collection of any of the revenues, or to enforce the right of citizens of the United States to vote in any State."

Section 2201. Creation of remedy:

"In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. As amended May 24, 1959, c. 139, § 111, 63 Stat. 105."

Section 2202. Further relief:

"Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

Title 38 U.S.C.A.

Section 454a. Assignability and exempt status of payments of benefits:

"Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payment.

"From and after October 17, 1940, this section shall be construed to prohibit the collection by set-off or otherwise out of any benefits payable pursuant to any law administered by the Veteran's Administration and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (a) any person other than the indebted beneficiary or his estate; or (b) any beneficiary or his estate except amounts due the United States by such beneficiary or his estate by reason of overpayments or illegal payments made under such laws relating to veterans, to such beneficiary or his estate or to his dependents as such: Provided, however, That if the benefits be insurance payable by reason of yearly renewable term or of United States Government life (converted)

herein provided shall be inapplicable to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness be in the form of liens to secure unpaid premiums, or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits: Provided further, That nothing in this amendatory Act shall be construed to modify or repeal section 687b of this title. Aug. 12, 1935, c. 510, § 3, 49 Stat. 609; Oct. 17, 1940, c. 893, § 5, 54 Stat. 1195."

Title 48 U.S.C.A. Bill of Rights

". . . (e) No person shall be deprived of life, liberty, or property without due process of law.

"(f) Private property shall not be taken for public use without just compensation.

". . . (n) No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied. . . ."

Section 1421c:

"Certain laws continued in force; modification or repeal of laws; applicability of Acts of Congress . . . (b) Except as otherwise provided in this chapter, no law of the United States hereafter enacted shall have any force or effect within Guam unless specifically made applicable by Act of the Congress either by reference to Guam by name or by reference to 'possessions'."

Section 1421h:

"Duties and taxes to constitute fund for benefit of Guam.

"All customs duties and Federal income taxes derived from Guam, the proceeds of all taxes collected insurance issued by the United States, the exemption

under the internal-revenue laws of the United States on articles produced in Guam and transported to the United States, its Territories, or possessions, or consumed in Guam, and the proceeds of any other taxes which may be levied by the Congress on the inhabitants of Guam, and all quarantine, passport, immigration, and naturalization fees collected in Guam shall be covered into the treasury of Guam and held in account for the government of Guam, and shall be expended for the benefit and government of Guam in accordance with the annual budgets. Aug. 1, 1950, c. 512, § 30, 64 Stat. 392."

Section 1421i:

"Applicability of Federal income tax laws:

"The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam. Aug. 1, 1950, c. 512, § 31, 64 Stat. 392."

Section 1422c:

"Executive agencies and instrumentalities — Appointment of heads; preferences in appointments and promotions; educational and vocational training; establishment of merit system

"(a) The Governor shall, except as otherwise provided in this chapter or the laws of Guam, appoint, by and with the advice and consent of the legislature, all heads of executive agencies and instrumentalities. In making appointments and promotions, preference shall be given to qualified persons of Guamanian ancestry. With a view to insuring the fullest participation by Guamanians in the government of Guam, opportunities for higher education and in-service training facilities shall be provided to qualified persons of Guamanian ancestry. The legislature shall establish a merit system and, as far as practicable, appointments and promotions shall be made in accordance with such merit system.

"Appointment and removal of officers; powers and duties of officer

"(b) The Governor may appoint or remove any officer whose appointment or removal is not otherwise provided for. All officers shall have such powers and duties as may be conferred or imposed on them by law or by executive regulation of the Governor not inconsistent with any law."

Title 42 U.S.C.A.

Section 1981. Equal rights under the law:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R. S. § 1977."

Section 1983. Civil action for deprivation of rights:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R. S. § 1979."

Section 1988. Proceedings in vindication of civil rights:

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in con-

formity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. R. S. § 722."

Code of Civil Procedure of Guam

Section 690.

"Property exempt from execution or attachment. Exceptions.

"The following property is exempt from execution or attachment, except as herein otherwise specially provided: . . .

"13. All money received by any person, a resident of Guam as a pension from the United States Government, or as a pension or retirement salary from the government of Guam, whether the same shall be in the actual possession of such pensioner, or deposited or loaned by him. . . ."

SUMMARY OF ARGUMENT.

This appeal consisting of two separate appeals in the same cause has been consolidated and therefore in the interests of brevity and clarity the numerous errors claimed in the proceedings by appellants have been combined into the few but more logical points to which they properly belong. Thus, in this brief, the errors cited will not be treated as

separate points but in related groupings as logically as they fall.

Appellants claim that among the many errors contained in this proceeding the following predominate and require the reversal of the District Court of Guam and the remand of this cause for a hearing on the merits.

Clearly the District Court of Guam had jurisdiction of the subject matter of the action and equally clearly when the action and the very file was in this court, the District Court of Guam lacked jurisdiction and authority to dismiss the action. Equally clear under the facts alleged in the complaint the court erred in not granting the temporary injunction sought first. This action is not one against any Government, but against individuals for actions in excess of and in the absence of legal authority. Secondly, admitting solely for argument, that this action can be construed as against the Government of Guam, yet not a party hereto, this action clearly falls within the exception in Section 1341, Title 28 U.S.C.A. There exists no speedy, plain or efficient remedy except by action brought in the District Court of Guam.

The court erred in basing its rulings upon facts not before it, in taking an affidavit as proof of its contents rather than as provided by Rule 56—to show the lack of any substantial controverted fact—not to prove a fact in issue, in considering an affidavit not served in accordance with Rule 56 and, at that, one based upon information and belief and hearsay, in determining upon assumption and in the face of the plain text of the local statutes (not by the court considered) that the defendants are the properly authorized officers to collect income tax, proof to the contrary not being permitted and thus by implication the determination

that adequate procedures, remedies, and safeguards must exist.

The court erred in refusing to admit the difference between a public officer acting within the scope of his office and authority and an officer acting in his individual capacity beyond that scope and authority or even acting with no cloak of authority either express or implied. These appellants could not show the limits of appellees' authority and the existence of any acts outside of any authority.

The court erred gravely in distinguishing between Statutes of the United States, Statutes of Guam, and such Statutes, if any exist, as may be statutes enacted by the Congress as local Statutes of Guam. This error, so basic, resulted and will result in the future in similar confused causes. Appellants contend that Statutes of the United States must remain such except as provided by the clear command of Statute and that they cannot be transferred by implication either Executive or Judicial into local territorial Statutes and that therefore it is error to interweave certain portions of local Statutes into Title 26 U.S.C.A. and treat the local handicraft as one Statute. This has resulted in a false and erroneous concept and the mirage of a Statute combining parts of a United States Statute and certain sections of a territorial Statute, which Statute was as so assembled never enacted either by the Congress or the Guam Legislature.

It has the additional virtue of not only imposing a taxing Statute by implication and construction, but also Penal and Criminal sanction created in the same manner.

The court plainly erred in not noticing the plain provisions of Section 454a of Title 38 U.S.C.A. and Section 690

(13) of the Code of Civil Procedure of Guam. These sections are mandatory and appellants contend the court must take Judicial Notice of the Statutes of the United States and of Guam.

The court erred in permitting persons not members of the Bar to appear and represent appellees. Appellees being sued in their individual capacities are, by the Codes of Guam, not entitled to be represented at the expense of the public and all Government employees are forbidden by law to appear for private individuals. The Government of Guam is not a party to this action.

Appellants contend that the District Court of Guam plainly erred and with preconceived opinions ignored the numerous constitutional questions raised by the complaint. That such questions are not frivolous and can only be properly determined after the taking of evidence. That constitutional and questions of similar gravity cannot and should not be resolved upon a hearing upon a motion. That on a motion a court cannot determine whether or not there has been an usurpation of the Legislative Powers of the Congress or of the Legislative Power to levy taxes. Such a violation may be either a void delegation or an erroneous construction and application of a valid provision.

Likewise, the appellants contend that only upon a full disclosure of the facts and upon the reception of evidence can the court determine an infringement of the IV and V Amendments.

Appellants believe that it is only by the reception of evidence that any court can determine whether, under the facts in a particular action, there has been a denial of the Equal

Protection of the Laws and of Due Process by the defendants. The District Court erred in ignoring these questions raised and in precluding appellants from attempting to demonstrate the existence of the fact as alleged in the complaint. So also with respect to irreparable harm, and injury. In like manner the District Court of Guam disregarded the fact that this complaint also sets forth a claim for relief and allegation of fact in support thereof under the civil rights Statutes of the United States. Appellants claim this likewise constitutes reversible error.

Appellants affirm that the District Court of Guam disregarded erroneously the grave questions with respect to the legality of Section 1421i of Title 48 U.S.C.A. as interpreted and construed by the defendants. That sufficient allegations of the repugnance of this interpretation to both the Constitution and Laws of the United States are contained in the complaint. That such questions cannot be resolved and decided upon a hearing on a motion, but must be decided after authorities and evidence are before the court. The court can take Judicial Notice of the text of a Statute, but the Rule of Reason says that how an individual or many individuals construe such a section is a fact to be proven.

Thus appellants claim the court erred in not considering the allegations of the complaint with respect to repugnance to the Constitution and Laws of the United States, the vice of absence of Standards, Indefiniteness and Ambiguity; vagueness, uncertainty; lack of any grant or delegation of authority or power; the violations of the Canons of Statutory construction in the interpretation asserted.

In like manner, appellants assert that the court erred in disregarding the clear allegations of substantial violation

of the Bill of Rights of Guam contained in the Organic Act of Guam.

Therefore, appellants contend that the District Court of Guam should be reversed, the appellees should be restrained, and a hearing on the merits directed after defendants have answered.

ARGUMENT.

Appellants, in the two appeals in this case, herein consolidated, have noticed a total of twenty-three points as errors. Mature consideration of these far too numerous points leads to the necessary conclusion that basically these points fall into a lesser number of more comprehensive points. To consider the matter in that manner is not only more logical and concise but also efficient and therefore appellants have presumed to consolidate the various points of claimed error. It is trusted that thus a more compact brief can be presented and the time of this Court conserved.

I.

THE DISTRICT COURT OF GUAM ERRED IN DENYING THAT IT HAD JURISDICTION OVER THE SUBJECT MATTER OF THIS ACTION, THEREAFTER ASSUMING JURISDICTION OF THE CAUSE AFTER AN APPEAL HAD BEEN TAKEN AND THE CASE AND FILES TRANSFERRED TO THE APPELLATE COURT; AND SECONDLY HOLDING THAT IT COULD NOT GRANT AN INJUNCTION OR RESTRAINING ORDER UNTIL APPELLANTS HAD SUBMITTED TO APPELLEES' DEMANDS.

The District Court of Guam was in error and abused its discretion when it refused to grant a preliminary injunc-

tion, basing its ruling as was indicated by the Court in its statements (T.R. pp. 25-27, pp. 28-31). In essence this was a denial of jurisdiction to act as the appellants claim the court should. This is further brought out by the text of the order of dismissal entered on November 30, 1954 (T.R. p. 34).

Clearly the Court erred for two reasons. Upon the facts as alleged, and neither controverted nor denied, violations of the mandates of the United States Constitution were set forth, violations of Title 26, U.S.C.A. were charged, infringement of the provisions of Title 38, U.S.C.A. were set forth, and the construction of portions of Title 48, U.S.C.A. and violations of the same were alleged, all combined with allegations of denial of rights protected by the provisions of Title 42, U.S.C.A., the Civil Rights Statute of the United States. The only violation or infringement of territorial law set forth was the arbitrary disregard of the Code of Civil Procedure of Guam, Section 690 (13), and that right is also under the protection of the United States. Clearly, few citations of authorities are required to show that the District Court of Guam did have jurisdiction of the subject matter of this complaint and its dismissal of the same without giving appellants their day in court and opportunity to attempt to prove the same was reversible error.

State of Colorado v. Roger W. Toll, 69 L. Ed. 927:

> "... The object of the bill is to restrain an individual from doing acts that it is alleged that he has no authority to do, and that derogate from the quasi sovereign authority of the state. There is no question that a bill in equity is a proper remedy, and that it may be pursued against the defendant without joining either his superior officers or the United States. Missouri v. Holland, 252 U. S. 416, 431, 64 L. Ed. 641, 646, 11 A.L.R. 984, 40 Sup. Ct. Rep. 382. . . ."

Nutt v. Ellerbe, 56 F. 2d 1058:

"... It has been repeatedly held that the remedy at law must be plain and where there is doubt about it the taxpayer is not required to speculate and take the chances of being able to recover at law. Davis v. Wakelee, 156 U.S. 680, 15 St. Ct. 555, 39 L. Ed. 578; Union Pac. R. Co. v. Board of Com'rs of Weld County, 247 U. S. 282, 38 S. Ct. 510, 62 L. Ed. 1110; Atlantic Coast Line R. Co. v. Doughton, 262 U.S. 413, 426, 43 S. Ct. 620, 67 L. Ed. 1051, and cases cited therein. . . ."

Hynes v. Grimes Packing Co., 93 L. Ed. 1231:

"... If respondents show that they are without an adequate remedy at law and will suffer irreparable injury unless the enforcement of the alleged invalid regulation is restrained, a civil suit will enjoin. . . ."

Maryland & Virginia Milk Products Assn. Inc. v. Hazen, 85 F. 2d 302:

"... We do not agree with the contention of defendants that the court was prohibited from entertaining this suit by reason of section 3224, R. S. (26 U.S.C. sec. 1543 (26 U.S.C.A. sec. 1543)) which provides that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' This section was intended to apply only to suits to restrain the assessment and collection of taxes levied by the United States. . . . This section, therefore, is not applicable to the present case, since the tax herein involved was not assessed by the internal revenue officers of the United States, but by municipal authorities, in order to defray the expenses of the District of Columbia, and would not, as such, become part of the general revenues of the United States. . . ."

Michael J. Healy v. Louis D. Tatta, 78 L. Ed. 1249:

"... It is true that where there is no method at law to test the legality of a tax without risk of incurring a

penalty, the imminence of the penalty may involve such a threat of irreparable injury as to satisfy the requirements of equity jurisdiction. See Matthews v. Rodgers, 284 U.S. 521, 526, 76 L. Ed. 447, 452, 52 S. Ct. 217.

"But the inability of a taxpayer to litigate the validity of a tax without risk of irreparable injury to his business, which is ground for invoking the equity powers of a federal court, affords no measure of the value of the matter in controversy.

"The disputed tax is the matter in controversy, and its value, not that of the penalty or loss which payment of the tax would avoid, determines the jurisdiction. . . ."

See also

Shelton et al. v. Gill, 202 F. 2d 503.

How then did the District Court of Guam come to such an erroneous conclusion? Basing its thoughts upon the provisions of Section 3653 Title 26, U.S.C.A. which refer solely to United States taxes, not the taxes of other jurisdictions, the Court apparently holds that this section is now part of the Codes of Guam. If this section applies and these are United States taxes, the Government of Guam and its agents have no authority, and the Commissioner of Internal Revenue is abandoning his mandatory duties.

The proper section, which the District Court of Guam should have considered and applied, but did not, is Section 1341, Title 28, U.S.C.A., which section while forbidding injunction with respect to taxes under state laws, provides specifically that the restrictions shall not apply where there is lacking a plain, speedy and efficient remedy in the courts of the state.

Acting upon the assumption that Section 3653 of Title 26, U.S.C.A., not Section 1341 of Title 28, U.S.C.A. applies, the Court construed this as precluding appellants from any opportunity to demonstrate the various infringements of rights protected by Federal law and the Constitution until and unless appellants had submitted to the very wrongs from which relief was sought.

The appellants were deprived of any opportunity to show by any evidence that there in fact did and does not exist any remedy, speedy, effective or efficient.

Appllants not only alleged the lack of any remedy and great and irreparable injury, but further substantiated this with their affidavits. Appellees, relying upon the unknown statute proclaimed by themselves to exist, and apparently relying upon the irrelevant and immaterial dicta of the District Court of Guam, chose not to oppose the sought interlocutory injunction. With the allegation of the irreparable injury threatened, the affidavits in support thereof, and no denial or evidence in opposition, appellants believe that good grounds for this injunction were established and that the District Court of Guam abused its discretion in denying the same.

After denying the request for the injunction, the District Court of Guam at the next hearing, and after appeal was taken, determined that it had no jurisdiction over the subject matter of this action, upon the reasoning that since appellants resisted and would not meekly submit to the infringement of their rights guaranteed by the Constitution and laws of the United States, they therefore were not entitled to any relief in the District Court of Guam of any nature.

In what manner can the reasoning of the Honorable and Learned Court sustain his holding that appellants possess no rights which can be protected?

In support of his holding, the only evidence considered was the improper affidavit of Mr. Mangerich which was in support of a summary judgment motion but which clearly sets forth the vast sums demanded of appellants and the threats to impose penalties. The question may be raised as to where, since appellants did not file income tax returns, Mr. Mangerich obtained his figure. These figures appellants admit are based upon the figures reported to the Government of Guam monthly by appellants under the provisions of the Business Privilege Tax Law of Guam which requires all persons engaged in a business or profession to report and pay tax upon their entire gross income. Appellants have always reported their gross income and paid the tax promptly. Appellants are convinced that the statutes and the cases clearly demonstrate that the District Court of Guam committed reversible error in dismissing the complaint.

Further, the Court erred in dismissing this action because the denial of the injunction sought, a denial we assert was based upon a wrong premise and bias in favor of a preconceived opinion, is shown by the statement of the Court made on pp. 30-31, T.R. Here the District Court of Guam ruled without confidence in its conviction; and impeded, hampered and infringed upon the appellate jurisdiction of this Court. (Consider also the various irrelevant and confusing statements of the Court on pp. 26-27, 29-31, T.R.) This action of the District Court of Guam clearly was intended to detract from the jurisdiction of this Court, and if, as sought

by the appeal, such an injunction was directed, there would be no parties and no proceedings remaining in the District Court upon which to act.

Also, the District Court of Guam erred in refusing to consider the clear and direct allegations in the complaint in no way connected with tax, setting forth violations of the statutes and Constitution from which protection and relief were sought. This, appellants claim, is error.

The Court also disregarded the fundamental rule that upon a motion to dismiss all allegations of the complaint stand admitted.

Callaway v. Hamilton Nat. Bank of Washington, 195 F. 2d 556:

> ". . . in dealing with the record on this appeal, however, we must observe the usual rule that on a motion to dismiss, the plaintiff's allegations are to be taken as true and all reasonable favorable inferences arising therefrom are to be indulged. . . . A motion to dismiss should not be sustained 'unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim set forth by the plaintiff.' . . ."

National Exchange Club v. Reams, 4 F.R.D. 151:

> ". . . In the instant case, that portion of the amended petition which seeks to restrain the Collector contains language almost, if not, identical with the language employed in the case of Midwest Haulers, Inc., et al. v. Brady, 6 Cir., 128 F. 2d 496. This case also holds that 'allegations of the complaint are admitted by a motion to dismiss.' . . ."

Camden Fire Ins. Ass'n v. Di Giovan, 75 F. 2d 808:

> ". . . In the instant case, as the court dismissed the bill on motion, we must accept all the well-pleaded allegations of the bill of complaint as true.

"But there is still a further answer to this contention. The adequate remedy at law which will prevent the maintenance of a suit in equity in the federal court is a remedy at law available in the federal court. Henrietta Mills v. Rutherford County, 281 U. S. 121, 50 S. Ct. 270, 74 L. Ed. 737; Smyth v. Ames, 169 U. S. 466, 18 S. Ct. 418, 42 L. Ed. 819; Risty v. Chicago, R. I. & P. R. Co., 270 U. S. 378, 46 S. Ct. 236, 70 L. Ed. 641. . . ."

Inland Milling Co. v. Huston, 11 F. Supp. 813:

". . . The only evidence before the court is the verified complaint of petitioner, and, for the purpose of this hearing, no other evidence being presented or offered, the court is required to accept as true the allegations of fact in such complaint, and the court here adopts such facts as findings of fact by the court. . . ."

For these reasons and numerous others appellants assert the District Court of Guam should be reversed, an injunction issue and appellees required to answer.

II.

THE COURT ERRED IN BASING ITS RULINGS ON FACTS NOT BEFORE IT; IN ACCEPTING AN AFFIDAVIT OFFERED BY APPELLEES AS CONCLUSIVE PROOF OF THE HEARSAY AND ALLEGATIONS CONTAINED THEREIN; AND FAILED TO OBEY THE PLAIN COMMAND OF RULE 56 THAT SUCH AN AFFIDAVIT IS SOLELY FOR THE PURPOSE OF PROVING THE ABSENCE OF MATERIAL CONTROVERTED ISSUES; THUS BY IMPLICATION HOLDING APPELLEES TO BE DULY AUTHORIZED TO COMMIT THE ACTS COMPLAINED OF AND ALSO THE EXISTENCE OF ADEQUATE PROCEDURES AND REMEDIES.

We ask first, what facts were before the Court? No witnesses testified; no evidence was taken. On the 12th day of November, 1954, at a hearing upon a motion for a prelimi-

nary injunction, the only facts presented to the Court for its consideration were the allegations of fact contained in the complaint and the affidavits filed by appellants. As upon a motion to dismiss, it is presumed that likewise the uncontroverted allegations of fact contained in the complaint and supported by the affidavits of both appellants must and should be for the purposes of the motion taken as true. The appellees were fully advised of the basis for the injunctive relief sought by appellants and yet chose not to oppose it in any manner. In fact, if this Court will consider the amazing transcript (T.R. pp. 25-28) of this hearing, it will discover that the motion was not even mentioned by the appellees, their only comments being on a motion to dismiss, never noticed to appellants, and filed on that morning.

The Court's attention is invited to the fact that after appellants objected to the appearance of Mr. Otto and Mr. Rosenberry, appellants were never again permitted to comment on the motion before the Court. The Court proceeded to discuss many matters, but not the motion.

The second hearing in this case, a hearing upon a motion by appellees to dismiss, was had on the 26th day of November, 1954. The motion had been filed on the morning of the 12th day of November, 1954, just prior to the hearing of appellants' motion for injunctive relief. No notice of motion pertaining to this motion to dismiss was ever filed or served upon appellants. During the first hearing on November 12, 1954, the Court discussed this motion to dismiss freely and when it was brought to his attention that there was no notice of motion on file, the Court arbitrarily set this motion to dismiss to be heard on the 26th day of November, 1954. The Court was obviously aware of the contents of this mo-

tion to dismiss as he commented upon the contents and supporting affidavit familiarly, although he obviously had no opportunity to review either the motion or the affidavit after it was filed and before the hearing on that morning. At the hearing on the 26th day of November, 1954, the Court refused to recognize that this cause was on appeal and that the entire file was in the possession of the Clerk of the Ninth Circuit Court of Appeals.

Appellants assert that since this was a hearing upon a motion to dismiss based upon the grounds of failure to state a claim and lack of jurisdiction over the subject matter, coupled with a motion for summary judgment, the Court erred in dismissing this action since it is plain under the rules and the cases that jurisdiction of the subject matter was set forth on numerous grounds in the complaint and in nowise was its absence demonstrated. Jurisdiction was plainly alleged on Constitutional grounds, under Title 26, U.S.C.A., Title 38, U.S.C.A., and though not specifically alleged by reference to the title, a claim under the Civil Rights provisions of Title 42, U.S.C.A. was spelled out throughout.

Upon a motion to dismiss, the motion must be denied if a claim upon which relief can be granted is in any way set forth in the complaint and its absence not demonstrated by the movant. The allegations of the complaint for the purposes of the motion must be admitted as true. Wherein does the record support the ruling of the District Court of Guam?

The following citations support appellants' contention:

Person v. United States, 112 F. 2d 1:

> "... The second ground for attack upon the summary judgment procedure is that the court considered a sup-

porting affidavit not made 'on personal knowledge', as required by Rule 56 (e). The Rule contains such a requirement and this affidavit does not conform thereto, and, therefore, is of no avail. . . ."

United States v. Kehoe, 4 F.R.D. 306:

". . . The plaintiff's motion for summary judgment is supported by an affidavit which does not state, as required by the Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723c, that it is made on the personal knowledge of the affiant. Plaintiff contends that Rule 56 permits a motion for summary judgment to be made with or without supporting affidavits. The plaintiff, having elected to make various allegations in the supporting affidavit and having elected to attach various exhibits to the supporting affidavit, which it must have considered necessary to support the motion, must be governed now by the Rule or supporting affidavits. The supporting affidavit is not made on personal knowledge as is required by the Rule, and is therefore faulty . . ."

Furton et al. v. City of Menasha, 149 F. 2d 1945:

". . . On this motion for summary judgment we must accept the allegations of complaint as true. Defendant's position is likewise simple . . ."

Wittlin v. Giacalone, 154 F. 2d 20:

". . . We are impelled to that conclusion because it is well established that one who moves for smmary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, and that any doubt as to the existence of such an issue is resolved against the movant. The courts are quite critical of the papers presented by the moving party, but not of the opposing papers. Indeed, Professor Moore says in his work on Federal Practice Under the New Federal Rules:

> 'Even if the pleading of the party opposing the motion is defective and does not state a sufficient

claim or defense, the motion will be denied, if the opposing papers show a genuine issue of fact.' . . ."

Callaway v. Hamilton Nat. Bank of Washington, 195 F. 2d 556:

"... In dealing with the record on this appeal, however, we must observe the usual rule that on a motion to dismiss, the plaintiff's allegations are to be taken as true and all reasonable favorable inferences arising therefrom are to be indulged. Dioguardi v. Durning, 2 Cir., 139 F. 2d 774. A motion to dismiss should not be sustained 'unless it appears to be a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of the claim set forth by the plaintiff.' Dennis v. Village of Tonka Bay, 8 Cir., 151 F. 2d 411, 412. See also Dollar v. Land, 81 U. S. App. D. C. 28, 154 F. 2d 307, affirmed 330 U. S. 731, 67 S. Ct. 1009, 91 L.Ed. 1209. Further, regardless of what label may be attached to this proceeding at this stage, we think we must dispose of it on the following basis: First, as indicated above, we must take plaintiff's assertions of fact as true—they are not disputed, nor are they patently false. Second, we must not attempt to resolve any conflict in the inferences to which they give rise, for to do so would go beyond the proper scope of either a motion to dismiss or one for summary judgment. Sartor v. Arkansas Gas Corp., 321 U. S. 620, 64 S. Ct. 724, 88 L.Ed. 967; Ottinger v. General Motors Corp., D. C. S. D. N. Y., 27 F. Supp. 508; Farrall v. District of Columbia, A.A.U., supra. Third, we must determine whether, if all conflicting inferences were to be resolved in plaintiff's favor at a trial, he would nevertheless not be legally entitled to a recovery . . ."

The Court found that these appellees are officers being sued in their official capacities (T.R. p. 25, last paragraph, pp. 28, 29, 30) and that they were, therefore, acting within

the scope of their authority. This he found without any substantiation other than possible hearsay and knowledge which the Court must have acquired privately. This is amply borne out by the failure of counsel for appellees to argue their motion and the extensive argument appearing in the record on behalf of appellees made by the Court. The Court blandly concluded that there was no question of any acts in excess of authority on the part of appellees.

The Court plainly intended, and again it is borne out by the record, that the record of this hearing should reflect his own conclusions as to what the basis for the financial structure of the Government of Guam should be. His discussion was not pertinent to the pleading or the motion before him. He never permitted appellants to argue against the motion itself, as is clearly shown by the transcript.

III.

CAN PUBLIC OFFICIALS SHIELD THEIR INDIVIDUAL ACTS IN EXCESS OF THEIR STATUTORY AUTHORITY BEHIND THE CLOAK OF THEIR OFFICIAL TITLE OR OFFICE?

Appellants believe that the Courts of the United States have consistently maintained a clear cut distinction between the acts of an individual within the scope of his statutory authority, for which acts he may claim the protection of his office, and the other category of acts by such officials falling into two classes, the first being acts in excess of and outside the scope of their authority; the second class being acts either contrary to the scope of authority or those without any statutory authority whatsoever.

It is the latter two classes of acts which these appellees are, in the complaint, charged with, and from which relief is sought.

A basic principle in the construction of pleadings of such long standing as to require no citation of authority on the principle that on a motion to dismiss all allegations of the complaint stand admitted. The single affidavit in support of defendants' motion to dismiss, which affidavit consists almost entirely of conclusions of law and hearsay, does not in any way controvert the allegations of the complaint. It in no way refutes the allegations of the complaint alleging that the appellees are acting in excess of their authority and in the absence of any statutory authority, and therefore cannot be acting as government officers and were properly sued in their individual capacities. The District Court of Guam not only can, but must, take judicial notice of the statutes of the unincorporated territory of Guam, particularly the provisions of Title XX, Government Code of Guam, and the further fact that this title contains all of the statutes with respect to tax of this territory. A reading of the text of Title XX clearly refutes the entire position of the appellees as to their rights to seek protection as employees or officials of the unincorporated territory of Guam. The complaint clearly sets forth the fact that this action was instituted, not against the Government of Guam, but against Richard Taitano and Harry L. Mangerich alone, T. R. p. 4, Paragraph 3 of the complaint. The District Court of Guam apparently closed its eyes to the pleading before it as shown by the statements of the Court, T. R. p. 25, last paragraph, first sentence.

The following citations of authority bear out appellants' contentions:

> *Marion H. Allen v. Regents of the University System of Georgia,* 82 L. Ed. 1449. ". . . We are not unmindful of the principle that suits against officers to restrain action in excess of their authority or in violation of statutory or constitutional provisions are in their nature personal . . ."
>
> *Bomberger v. International Freighting Corporation,* 92 F. Supp. 611. "An action can be maintained against an agent of the United States at common law for the agent's own torts. Brady v. Roosevelt S. S. Co., 317 U. S. 575, 63 S. Ct. 425, 87 L. Ed. 471."

Clearly, the appellees cannot claim the protection of their titles and should be required to meet the allegations of the complaint with competent evidence, if possible, at a hearing on the merits.

IV.

THE DISTRICT COURT OF GUAM WAS IN ERROR IN ITS INTERPRETATION OF STATUTES OF THE UNITED STATES AND IN HOLDING BY IMPLICATION THAT IN ANY MANNER THEY ARE STATUTES OF GUAM.

We are, in brief, discussing the proper construction of certain sections of the Organic Act of Guam as set forth in Chapter 8A of Title 48, U.S.C.A.

This Act, since its inception, has been the basis of considerable litigation in the District Court of Guam and this Court has had before it several of these cases on appeal.

Legislation for Guam falls into three categories. First is legislation by the Congress of the United States which applies to Guam. Second is legislation by the Guam Legislature. Third is special legislation by the Congress of the

United States expressly amending or adding to the Codes of Guam. Other than the Organic Act continuing the existing Codes of Guam in effect, there has been no legislation of the third type to this date. There has been no legislation in the second category in regard to income taxes or any matters related thereto.

Therefore, we have the Organic Act of Guam with its Section 31. We have the misconstruction on the part of the District Court of Guam, which incorporates the Internal Revenue Code of the United States, with an unknown number of deletions, changes and modifications, into the Codes of Guam. We have officials of the Government of Guam cloaking themselves with all of the authority of the Commissioner of Internal Revenue of the United States. We have the District Court of Guam, after incorporating portions of the United States Internal Revenue Code into the Codes of Guam, construing those sections so as to give local officials all of that Federal authority, but at the same time giving those same officials carte blanche to amend, delete, alter and supplement the Federal statute, thus depriving the residents of Guam of administrative remedies under the same alleged law, in depriving that resident of the equal protection of the law and in violating his civil rights with impunity.

Where does this misconception lie? The Organic Act of Guam is a true United States statute and must be treated and interpreted as such. The District Court of Guam has treated it as special legislation which, by Section 31 of said Act, lifts the incomplete and altered text of the Internal Revenue Code of the United States and places it in the local codes. Clearly this is legislation by the District Court of

Guam acting in conjunction with the executive department of the Government of Guam. A statute of the United States, while it can be copied or adopted by a local legislative entity, cannot be incorporated into the statutes of that jurisdiction by implication. It must be adopted by express enactment either by the Congress of the United States or the legislative body of the local unit. The income tax of the Territory of Alaska is an example of the adoption of a Federal statute for use by a local legislature wherein the Federal statute is taken in its exact text and the local legislature specifically provides how the Act shall be construed for local application, even to specifying the inclusion in the local law of future enactments by the Federal Congress.

Obviously, in the case of Guam this is not so. As stated above, the Legislature of Guam has never acted upon any phase of the income tax problem. It is plainly seen that we do not have here a local statute using the text of the Federal statute.

What do we have in Guam? In the absence of a statement by the Congress enacting the income tax laws of the United States as a local statute, and of this there is no evidence, we have a Federal statute which states simply that the income tax laws of the United States are in force in Guam. Did not the District Court of Guam err in reading into this single sentence not only the full text of those laws, but those laws altered by administrative action, creating the local officers and authorities necessary to administer the act, and by implication also reading in the necessary penal provisions to enforce compliance with it.

Can the District Court of Guam or any other court so construe one sentence to not only contain a large body of law

taken from numerous titles of the United States Codes, but also to contain changes, deletions and additions subject to the whims of local administrators not subject to the restraining provisions of those same laws or accountable to any competent authority, and, since this alleged code is not published, and, as this court may notice, no tax court or other safeguards do exist, can on the one hand there exist the enforcement provisions yet on the other, none providing any means for a citizen to seek relief or appeal the actions of appellees and others no matter how capricious, arbitrary or unwarranted. Appellants contend not. Appellants further contend that it is not only illogical but a legal impossibility for the income tax laws of the United States as cited by Section 31 of the Organic Act of Guam to be deleted in unspecified, unpublished and unidentified parts from the Federal statutes and to be made an additional part of the Codes of Guam to be construed and treated as a local law and that the District Court of Guam erred when it held portions of Title 26, U. S. C. A. to be also a local territorial law. By acting upon such an erroneous premise the conclusions that have been drawn by the District Court of Guam are therefore also erroneous.

V.

THE DISTRICT COURT OF GUAM ERRED IN FAILING TO TAKE JUDICIAL NOTICE OF THE PROVISIONS OF SECTION 454A, TITLE 38, U. S. C. A. AND OF SECTION 690 (13) OF THE CODE OF CIVIL PROCEDURE OF GUAM.

The District Court of Guam is charged with the duty and in a proper case must judicially notice appropriate and pertinent statutes of the United States and of Guam. This

the Court did not do even though Section 690 of the Code of Civil Procedure of Guam is mandatory in its terms and actually goes further than Section 454A, Title 38, U. S. C. A. Both sections are quoted in full ante Page 29 and Page 25.

Section 454A, Title 38, U. S. C. A., says in part:

> "... payment of benefits ... shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary."

Section 690 (13) Code of Civil Procedure of Guam states:

> "The following property is exempt from execution or attachment, ... all money received ... as a pension from the United States ..."

In view of these mandatory provisions of the statutes of the two governments, it is not clear that the Court was in error in not having found that Appellant, Finton J. Phelan, Jr., was deprived of property in violation of law and in denying the relief sought.

Appellants contend that the District Court should be reversed.

VI.

THE DISTRICT COURT OF GUAM ERRED IN PERMITTING LAYMEN NOT MEMBERS OF THE BAR TO APPEAR AND REPRESENT THE APPELLEES AS THEIR ATTORNEYS.

This action is one against the Appellees as individuals, not as officials of the Government of Guam. The Government of Guam is not a party hereto. Yet the District Court of Guam permitted two employees of the Attorney General of Guam to appear and represent the Appellees contrary

to the express provision of the Statutes of Guam and the rules of the Court.

It is of ancient origin that unless a party appears for himself he may only be represented in court by a member of the bar of such court. The Appellees were not represented by attorneys. T. R. Page 25:

> "Mr. Phelan: If it please the Court, the Government of Guam is not a party to this case and Mr. Otto and Mr. Rosenberry, who are appearing for these defendants, are appearing as private individuals, and they are not members of the bar of this Court, and I must object to their appearing in this action.
>
> The Court: The Court will overrule that objection. This is an action against officers in their official capacity and is an action against the Government."

See also Government Code of Guam, Section 2802.

Further, the Guam Statutes forbid any person employed by the Government to represent or appear for private parties. Government Code Sections 3001 and 3003.

Therefore, Appellants contend that this action of the District Court of Guam was error, demonstrated an indifference to the Statute and clearly showed the preformed conclusions of the Court—that the District Court should be reversed.

VII.

IT IS CONTENDED BY APPELLANTS THAT IN ADDITION TO THE ERRORS DISCUSSED ANTE, THEY WERE DEPRIVED ERRONEOUSLY BY THE DISTRICT COURT OF GUAM OF THEIR DAY IN COURT AND OF THE OPPORTUNITY TO DEMONSTRATE THE FOLLOWING MAJOR POINTS RAISED BY THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

(a) That the Court demonstrated bias and a closed mind by ignoring the constitutional questions contained in the complaint.

The Court, by its dismissal of this action, clearly demonstrated that it had reached its decision upon matters not contained in the record, nor introduced by any party, that no questions existed other than the claim of appellees to possess the right to collect a tax not contained in local statutes though presumably contained in an unpublished amended version of Title 26 U.S.C.A. Also, since appellants had refused to submit to the actions and demands of private parties, they possessed no rights which the District Court of Guam was required to acknowledge. The Court clearly demonstrated that it had no intention of recognizing or considering the fact, that even were the statutes to be as the appellees claim, that as private individuals they can be sued for acts beyond and outside the scope of their authorities and duties. Obviously, even a valid law may be so administered that the mode of administration is illegal and warrants relief. It is only by the taking of evidence that such facts can be demonstrated, and appellants were and have been effectively precluded from submitting any such evidence.

(b) The illegal assumption of the legislative powers of the Congress and the usurpation of the reserved powers of the Congress to lay and collect taxes in violation of the Constitution of the United States.

It is so basic as not to require the citation of authority that the legislative powers and authority of the Congress cannot be assumed or asserted by anyone and that if, in fact, a grant of power or duty is made, even by express act of the Congress, and such grant permits the exercise of legislative powers, it is void as being beyond the power of the Congress. If the Congress cannot grant the authority to anyone to legislate in a Federal field, can such power be assumed or seized by individuals? Appellants claim that it is a premise so simple and clear as to be obvious. It is, appellants urge, a fact admitted by all that Congress may delegate duties including that of administering, applying and construing the meaning of the text of a statute, but it is the statute as written by the Congress that is to be construed and applied. In innumerable cases it has been held that construction cannot change, alter or amend a statute. Can it be held otherwise than a clear invasion of the legislative powers of the Congress, to delete, add to, substitute words, change names, and otherwise re-write the text of a statute? If this is not legislation, appellants inquire what more could Congress itself do? Appellants contend that only by the reception of evidence and the demonstration of the acts alleged can the District Court of Guam or any other court determine the fact, whether or not these defendants have usurped that power in violation of the Constitution. Likewise, in creating themselves officers vested with these powers without any statutory delegation of duty on which to base their actions, do not these appellees likewise usurp

the authorities of the Congress to pay and collect taxes? The codes of Guam as this Court may notice do not grant such power. The statutes of the United States likewise do not. In the absence of evidence, can the District Court of Guam in any way intelligently pass upon this asserted and alleged constitutional infirmity?

(c) That the defendants have violated the provisions of the Fourth and Fifth Amendments to the Constitution of the United States.

The acts of the defendants which may constitute such a violation cannot, without evidence, be weighed. Can the District Court of Guam or any other Court pass upon such an action without receiving the evidence which appellants sought to introduce in support of their contention that these amendments had been violated? Appellants further contend that this violation is under color of authority of a Federal Statute, that it is the Organic Act of Guam and therefore that it is a proper matter to be considered by the District Court of Guam. Can the Congress of the United States authorize in any possession, or elsewhere, the denial of the equal protection of the laws of the United States as asserted by appellants that the defendants and others have denied them? Can the Congress of the United States authorize appellees or others to seize property of appellants and to deprive appellants of such property contrary to the provisions of the Fourth and Fifth Amendments? Can appellees threaten and strive to deprive appellants of their means of obtaining a livelihood?

Appellants claim that only through the presentation of evidence and not upon a motion can such issues be determined and that the District Court of Guam has effectively

precluded them from their opportunity of demonstrating the facts as alleged in the complaint. The opportunity to demonstrate denial to appellants of the equal protection of the laws and of due process of law, affecting both appellants and numerous clients, presumably innocent and unable to safeguard their interests, and the existence of irreparable harm and injury as asserted was denied. Can such be demonstrated on a motion?

In seeking the temporary injunction until a determination of this cause upon the merits, appellants presented affidavits in support of their request. These affidavits were not controverted in any way; yet it was conclusively assumed by the District Court of Guam that it did not possess the power to grant relief. No opportunity was given to appellants to demonstrate that under the peculiar facts and circumstances of this cause there was no adequate remedy at all. The harm demonstrated is irreparable, and the danger is so imminent that relief should be granted. Appellants have denied and continue to deny that they owe to the appellees or to anyone else, including the Government of Guam, the sums of money or any part of said sums which these appellees have asserted their right to levy and receive. Appellants have claimed without denial that they will be impoverished, that the harm can in no way be repaired, that their only recourse is to the protection of the Courts of the United States. This recourse, appellants believe, has so far been unavailable.

(d) That Chapter 8A, Title 48, Section 1421i, U.S.C.A., as interpreted by the defendants is repugnant to the Constitution and laws of the United States.

It contains no standards for the administration, operation, and collection of any income tax; it is indefinite and uncertain and also vague and ambiguous in that, as interpreted, it does not contain or set forth the text of the statute. The statute claimed by appellees to be therein contained, while asserted by them to be portions of Title 26 U. S. C. A., is unknown to appellants. Changes are not apparent, and cannot be determined by recourse to any portion of said Chapter 8A. It is impossible to determine, even with the assistance of extrinsic aids to construction including the legislative history of this Act, what sections of Title 26 apply to Guam, what sections have been altered and deleted, added to, changed or otherwise modified; who has the power and authority to make changes and modifications. Nowhere is there contained any grant of authority to administer, to collect, or to enforce this statute claimed to exist by the appellees.

It is impossible to determine the officers or individuals charged with duties under the Act and reference to the codes of Guam in no way enlightens one. The construction appellees have advanced clearly violates all of the precepts for the construction of statutes as laid down by the Supreme Court of the United States. It is clear that as construed by appellees, Section 1421i imposes a tax by implication, that their construction creates and imposes penal provisions, penalties and sanctions, and that in general their construction violates the clear text of that Section.

Probably the most fundamental evil is the fact that the simple language of this Section contains, when read in con-

nection with Title 26 U.S.C.A., a clear, workable and practical tax statute, with clearly defined limits of the power and authority of the officials designated to administer it, who they are, how the law shall be administered and to whom and where the taxes shall be paid. Appellants contend that the proper construction of this statute is that this Section reaffirms and continues the application to Guam of Title 26 U.S.C.A., which Title for many years has applied to Guam and which is continued in effect, subject to such future alterations as the Congress may from time to time make in its text. This statute clearly places full responsibility for the collection of income taxes on the Commissioner of Internal Revenue of the United States; specifically forbids the delegation by him of authority except to specified subordinates within his service; imposes upon him specific duties; and does in fact contain a practical and workable system.

The system is plain. The income tax laws of the United States are the tax laws that apply to Guam. They are not laws of Guam. Persons liable to a tax under this statute are clearly directed to file their returns with the District Director of Internal Revenue at Baltimore, Maryland and to make their payments to that official. He, in like manner, will dispose of said funds as he must by statute dispose of all funds coming into his possession. The fact that the Organic Act of Guam contains provisions for the Treasury of the United States to remit such funds to the Treasury of the unincorporated territory of Guam is no portion of any taxing statute but is merely a grant or appropriation of funds, said funds to be measured by the amount of Federal Income Tax revenue derived from sources within Guam. They are taxes, if owed to anyone, owed to the United

States. Can construction change this statute? Appellants contend that they have been deprived improperly of their opportunity to present authorities sustaining their contention.

(e) Violation of the Bill of Rights of Guam.

Appellants contend that clear violations of the protection provided for them and others in the Bill of Rights of Guam, a portion of the Organic Act of Guam, have been alleged in their complaint and that they have been deprived of any opportunity to substantiate by evidence their contentions.

CONCLUSION.

Appellants submit that the District Court of Guam should be reversed; that an injunction should issue; that appellees should be required to answer the complaint and meet the allegations contained therein.

Dated, Agana, Guam,
April 25, 1955.

Respectfully submitted,

Finton J. Phelan, Jr.,
E. R. Crain,
Pro se.